

In Re Application Of:  
R. R. Reinecke;  
J. A. Reinecke  
Serial No.: 10/803,017

Page 11

### **REMARKS**

Responding to an August 9, 2005 Office Action, and by the present response, the specification and Claims 1, 9, and 15 have been amended, Claims 16 and 21 have been canceled and Claim 22 has been added. No new matter has been added and no additional filing fee is required. Reconsideration of this patent application is kindly requested.

In Paragraph 1 of the Action, there is an objection to the disclosure. By the present response, the specification has been amended in the manner kindly suggested in the Action. Accordingly, reconsideration and removal of the objection to the disclosure is kindly requested.

By the present response, method Claim 21 is canceled from the pending claim program. Moreover, Applicants propose cancellation of Paragraph 0014 from the description. An amendment to the "Abstract of the Invention" is also proposed. Accordingly, Applicants propose amending the "Title of the Invention" such that the Title of the Invention more accurately reflects the essence of the invention. Entry of the proposed amendments to the specification, including the proposed change to the "Title of the Invention", is respectfully requested.

Basically, the present invention relates to an illuminable apparatus including a walled thematic structure configured with an operably closed chamber and defining an opening extending between an exterior of the walled structure and the closed chamber. To provide illumination for the apparatus, a light source is secured within the operably closed chamber of the walled structure. A light transmissive panel is also arranged within the closed chamber of the walled

In Re Application Of:

R. R. Reinecke;

J. A. Reinecke

Serial No.: 10/803,017

Page 12

enclosure. When in a first normal position, the light transmissive panel extends across and covers the opening defined by the walled structure while allowing illumination from the light source to pass therethrough. The light transmissive panel is arranged for movement from its first normal position to a second displaced position in response to motion of air passing through the opening in the walled enclosure. An electric circuit operably connects the light source to a power source so as to allow the light source to yield illumination viewable through the covering panel and opening in the walled enclosure. The electric circuit includes an apparatus for turning off power to the light source in response to a motion of air passing through the opening in the walled structure. The apparatus includes a switch arranged within the walled enclosure operably between the power source and the light source for turning off power to the light source in response to movement of said light transmissive panel toward the second displaced position.

In Paragraph 2 of the Action, pending Claims 1 through 3, 5 through 7, 9 through 13, 15, 17 through 19 and 21 were rejected under 35 U.S.C. §103(a) over U.S. Patent Publication No. US 2004/0203317 to D. Small in view of U.S. Patent No. 5,582,478 to D. J. Ambrosino. Reconsideration of the amended claims is respectfully requested.

Some of the shortcomings of the '317 Small device were mentioned in the Action. More specifically, the Action recognizes the '317 Small device does not include a light source having sensors which are responsive to motion of air so as to cause the candles to cease illumination. In addition to those structural differences, and unlike amended and independent Claims 1, 9 and 15

In Re Application Of:

R. R. Reinecke;

J. A. Reinecke

Serial No.: 10/803,017

Page 13

presented for reconsideration, the '317 Small device does not include a light source which is secured within the closed chamber of the walled enclosure. The light source of the '317 Small device is arranged in operable combination with "toy characters 400 " which, unlike that presented in amended Claims 1, 9 and 15, can be moved from place to place within the walled structure (*see Page 4, Paragraph [0044]*).

Given the structural shortcomings of the '317 Small device, the Action suggests the '478 Ambrosino device can somehow be combined therewith to fill those voids separating the present invention from the cited art of record. The mere fact the references can be combined or modified does not render the resultant combination obvious unless the prior art factually suggests the desirability of the combination. It has long been recognized, there must be some teaching, motivation, or factual suggestion to select and combine the references relied upon as evidence of obviousness.

Here, and absent impermissible hindsight examination, there is simply NO motivation and NO factual suggestion to combine the '317 Small device with the '478 Ambrosino device. In contrast to the present invention, the '478 Ambrosino device requires the imitation birthday candles to be arranged on the outside of the food covering system. To modify the '317 Small device to meet the claim limitations presented in amended Claims 1, 9 and 15, the imitation birthday candles of the '478 Ambrosino device would have to be restructured so as to arrange them to an interior rather than the disclosed exterior of a walled enclosure. Notably, such

In Re Application Of:

R. R. Reinecke;

J. A. Reinecke

Serial No.: 10/803,017

Page 14

modification would destroy the purpose or function of the '478 Ambrosino device. Accordingly, Applicants submit one of ordinary skill in the art would not have found a reason to make the claimed modification. Both the CCPA and the Federal Circuit have consistently held that when a §103 rejection is based on a modification of a reference that *destroys the intent, purpose or function of the invention disclosed in the reference*, such a proposed modification is NOT proper and a finding of obviousness cannot be properly made.

Additionally, amended Claims 1, 9 and 15 presented for reconsideration are each structurally distinguishable from the cited art of record. More specifically, the invention defined by each amended and independent Claim 1, 9 and 15 requires a light transmissive panel to be arranged within the closed chamber of the walled enclosure such that, when in a first normal position, such panel extends across and covers the opening defined by the walled structure while allowing illumination from the light source to pass therethrough. Moreover, such panel is arranged for movement from the first normal position to a second position in response to a motion of air passing through the opening in the walled enclosure.

As admitted in Paragraph 2 of the Action, the '317 Small device is not configured such that the light source can be extinguished when a motion of air is directed through an opening in the walled enclosure. In this regard, the '478 Ambrosino disclosure adds nothing to the disclosure of the '317 Small reference which would obviate the amended claims presented for reconsideration. That is, and within the four corners thereof, the '478 Ambrosino disclosure is

In Re Application Of:

R. R. Reinecke;

J. A. Reinecke

Serial No.: 10/803,017

Page 15

silent as to any form of movable light transmissive panel arranged within a closed chamber of a walled enclosure such that, when in a first position, such panel extends across and covers the opening defined by the walled structure while allowing illumination from the light source within the walled housing to pass therethrough.

Besides the structural differences mentioned above, the invention set forth in amended Claim 9 includes an electric circuit which serves to further distinguish amended Claim 9 from the purported combination of the '317 Small device with the '417 Ambrosino device. The electric circuit set forth in amended Claim 9 has a sensor including a switch for detecting movement of the light transmissive panel between first and second positions, and with the electric circuit further including a light source control apparatus connected to and operable in combination with the switch of said sensor for controlling the luminescence provided by the light source, and with the light source control apparatus being configured to change the luminescence provided by the light source when a motion of air is sensed through the opening in the walled structure.

Simply stated, the '317 Small device does not include an electric circuit having a sensor including a switch for detecting movement of the light transmissive panel between first and second positions. The '317 Small device does not include an electric circuit having a light source control apparatus connected to and operable in combination with the switch of the sensor for controlling the luminescence provided by the light source. Moreover, the '317 Small device does not include an electric circuit having a light source control apparatus configured to change the luminescence

In Re Application Of:  
R. R. Reinecke;  
J. A. Reinecke  
Serial No.: 10/803,017

Page 16

provided by the light source when a motion of air is sensed through the opening in the walled structure. Notably, the '417 Ambrosino disclosure fails to fill these multiple voids separating the structure of amended Claim 9 from the '317 Small disclosure.

By the present response, Claim 22 has been added to the claim program. The originally filed disclosure provides a proper basis for the addition of Claim 22 to the claim program. Claim 22 depends from and further defines the invention set forth in Claim 1. More specifically, Claim 22 recites the switch forming part of the electric circuit includes a spring biased contact for returning the light transmissive panel to a first position after the panel is displaced in response to a motion of air being directed through the opening in the walled enclosure.

As will be evident from the a review of the cited art, nothing within the four corners of either the '317 Small reference or the '478 Ambrosino reference obviates the structure set forth in new Claim 22.

Similarly, and besides those structural differences mentioned above which serve to distinguish amended Claim 15 from the cited art of record, the invention set forth in amended and independent Claim 15 includes an electric circuit for operably connecting the light source to a power source to allow the light source to provide luminescence viewable through the light transmissive panel and the opening in the walled structure. Unlike independent and amended Claim 15, the '317 Small device and the '478 Ambrosino device both fail to disclose or factually suggest an electric circuit, used to operably interconnect the light source to the power source, to

In Re Application Of:

R. R. Reinecke;

J. A. Reinecke

Serial No.: 10/803,017

Page 17

include a switch for detecting pivotal movement of said panel between said first and second positions and for enabling the circuit by connecting the power source to the light source in response to operation of the switch. Moreover, and in contrast to that set forth in amended and independent Claim 15, both the 'Small device and the '478 Ambrosino device fail to disclose or factually suggest an electric circuit, used to operably interconnect the light source and power source, to include a control apparatus connected to the switch for disabling the electric circuit and thereby operably disconnecting the power source from the light source when a motion of air is sensed through the opening in the structure. Additionally, and unlike amended and independent Claim 15 presented for reconsideration, neither the '317 Small device nor the '478 the Ambrosino device disclose or factually suggest an electric circuit, used to interconnect the power source with the light source, to include logic circuitry responsive to operation of a manually operated switch for again enabling the electric circuit through operation of the manually operated switch following a motion of air being blown through the opening in the walled structure.

For these and other reasons, independent and amended Claims 1, 9 and 15 are patentably distinguishable from U.S. Patent Publication No. US 2004/0203317 to D. Small or U.S. Patent No. 5,582,478 to D. J. Ambrosino. Accordingly, reconsideration and removal of the rejection under 35 U.S.C. §103 is respectfully requested.

Claims 2 through 8 and 22 depend, directly or indirectly, from and further define the invention set forth in amended Claim 1. Similarly, Claims 10 through 14 depend from and further

In Re Application Of:  
R. R. Reinecke;  
J. A. Reinecke  
Serial No.: 10/803,017

Page 18

define the invention set forth in amended Claim 9. Moreover, Claims 17 through 20 depend from and further define the invention set forth in Claim 15. Accordingly Claims 1 through 15, 17 through 20, and 22 are all patentably distinguishable from U.S. Patent Publication No. US 2004/0203317 to D. Small or U.S. Patent No. 5,582,478 to D. J. Ambrosino. Accordingly, reconsideration and removal of the rejection under 35 U.S.C. §103 is respectfully requested.

In Paragraphs 4 and 5 of the Action, pending Claims 4, 8, 14, 16 and 20 are rejected under 35 U.S.C. §103(a) over U.S. Patent Publication No. US 2004/0203317 to D. Small or U.S. Patent No. 5,582,478 to D. J. Ambrosino when purportedly combined with the Applicants admitted prior art.

Notably, Applicants admitted prior art fails to fill those above mentioned multiple structural voids separating amended and independent Claims 1, 9 and 15 from the purported combination of the '317 Small device with the '417 Ambrosino device. Since pending Claims 4, 8, 14, 16 and 20 depend from at least one of the amended and independent Claims 1, 9 and 15, they too structurally and patentably define over the purported combination of the '317 Small device with the '417 Ambrosino device. Accordingly, reconsideration and removal of the rejection of Claims 8, 14, 16 and 20 over U.S. Patent Publication No. US 2004/0203317 to D. Small or U.S. Patent No. 5,582,478 to D. J. Ambrosino along with Applicants admitted prior art is respectfully requested.

Similar reasoning applies to Paragraph 6 of the Action.



In Re Application Of:

R. R. Reinecke;

J. A. Reinecke

Serial No.: 10/803,017

Page 19

In Paragraph 7 of the Action, pending Claims 1, 2, 4, 5, 8, 9, 11, 13 through 15, 18, 20 and 21 were rejected under 35 U.S.C. §103(a) over U.S. Patent No. 3,479,561 to J. L. Janning in view of Applicants admitted prior art. In view of the amendments to Claims 1, 9 and 15, reconsideration of this rejection is respectfully requested.

Applicants respectfully traverse the purported combination of the Janning device with Applicants admitted prior art. Applicants maintain some toy houses and the like are known to include a light source therein for providing luminescence through windows or related openings. Applicant furthermore agrees the '561 Janning reference discloses a thematic device depicting an **exposed** candle as a light source. To modify the '561 Janning device to meet the claim limitations presented in amended and independent Claims 1, 9 and 15, the '561 Janning device would have to be restructured so as to arrange the bulb 22 simulating a candle flame (*see Column 2, line 41*) to an **interior** of a non-disclosed wall structure rather than leave it exposed. Such modification would destroy the purpose or function of the '478 Ambrosino device. Accordingly, Applicants submit one of ordinary skill in the art would not have found a reason to make the claimed modification. As mentioned above, both the CCPA and the Federal Circuit have consistently held that when a §103 rejection is based on a modification of a reference that *destroys the intent, purpose or function of the invention disclosed in the reference*, such a proposed modification is NOT proper and a finding of obviousness cannot be properly made.

Additionally, amended and independent Claims 1, 9 and 15 presented for reconsideration

In Re Application Of:

R. R. Reinecke;

J. A. Reinecke

Serial No.: 10/803,017

Page 20

are each structurally distinguishable from the cited art of record. More specifically, the invention defined by each amended and independent Claim 1, 9 and 15 requires a light transmissive panel to be arranged within the closed chamber of the walled enclosure such that, when in a first normal position, such panel both **extends across and covers** the opening defined by the walled structure while allowing illumination from the light source to pass therethrough. Moreover, such panel is arranged for movement from the first normal position to a second position in response to a motion of air passing through the opening in the walled enclosure. Applicants submit such claim limitations defining the invention cannot be ignored.

In contrast to that claimed in amended Claims 1, 9 and 15 presented for reconsideration, the '561 Janning device uses a series of baffles which, as shown in FIG. 2, DO NOT extend across the opening defined by the walled structure. In contrast to that claimed in amended Claims 1, 9 and 15 presented for reconsideration, the '561 Janning device uses a series of baffles which, as shown in FIG. 2, DO NOT cover the opening defined by the walled structure. Unlike the light transmissive panels forming part of the present invention, the baffle elements 40 of the '561 Janning device are "fabricated from a conductive material" (*see Column 2, lines 65 and 66*). Since the baffles 40 of the '561 Janning device are fabricated from a conductive material they are -- more likely than not -- incapable of transmitting light therethrough. Configuring the panels covering and extending across the openings in the walled structure of the present invention of a material which is incapable of transmitting light therethrough is antithetical to the present invention.

In Re Application Of:

R. R. Reinecke;

J. A. Reinecke

Serial No.: 10/803,017

Page 21

Besides those structural differences mentioned above, the invention set forth in amended and independent Claim 9 includes an electric circuit used to operably interconnect the light source to the power source and which serves to further distinguish amended Claim 9 from the purported combination of the '561 Janning device with Applicants admitted prior art. In contrast to that set forth in amended and independent Claim 9, the '561 Janning device fails to disclose or factually suggest an electric circuit serving to operably connect the light source to a power source to allow the light source to provide luminescence viewable through the light transmissive panel and the opening in the walled structure. In contrast to that presented for reconsideration in amended and independent Claim 9, the '561 Janning device fails to disclose or factually suggest an electric circuit which is used to operably interconnect the light source and power source and which has a sensor including a switch for detecting movement of the light transmissive panel between first and second positions, and with the electric circuit further including a light source control apparatus connected to and operable in combination with the switch of said sensor for controlling the luminescence provided by the light source, and with the light source control apparatus being configured to change the luminescence provided by the light source when a motion of air is sensed through the opening in the walled structure. Notably, Applicants admitted prior art fails to fill these multiple voids separating the structure of amended Claim 9 from the '561 Janning disclosure.

Similarly, and besides those structural differences mentioned above which serve to distinguish amended and independent Claim 15 from the cited art of record. In contrast to that set

In Re Application Of:

R. R. Reinecke;

J. A. Reinecke

Serial No.: 10/803,017

Page 22

forth for reconsideration in amended Claim 15, the '561 Janning device fails to disclose or factually suggest an illuminable amusement apparatus including an electric circuit for operably connecting the light source to a power source to allow the light source to provide luminescence viewable through the light transmissive panel and the opening in the walled structure. Unlike that presented for reconsideration in independent and amended Claim 15, the '561 Janning device fails to disclose or factually suggest an illuminable amusement apparatus including an electric circuit for operably connecting the light source to a power source and has a switch for detecting pivotal movement of a light transmissive panel between said first and second positions and for enabling the circuit by connecting the power source to the light source in response to operation of the switch. Moreover, and in contrast to that presented for reconsideration in amended and independent Claim 15, the '561 Janning device fails to disclose or factually suggest an illuminable amusement apparatus including an electric circuit for operably connecting the light source to a power source and has a control apparatus connected to the switch for disabling the electric circuit and thereby operably disconnecting the power source from the light source when a motion of air is sensed through the opening in the structure. Unlike that set forth for reconsideration in amended and independent Claim 15, the '561 Janning device fails to disclose or factually suggest an illuminable amusement apparatus with electric circuit for operably connecting the light source to a power source and includes logic circuitry responsive to operation of a manually operated switch for again enabling the electric circuit through operation of the manually operated switch following a motion of air being

In Re Application Of:  
R. R. Reinecke;  
J. A. Reinecke  
Serial No.: 10/803,017

Page 23

blown through the opening in the walled structure. Applicants admitted prior art fails to fill these multiple voids separating the amended and independent Claims 1, 9 and 15 from the '561 Janning device.

For these and other reasons, independent and amended Claims 1, 9 and 15 are patentably distinguishable from U.S. Patent No. 3,479,561 to J. L. Janning in view of Applicants admitted prior art. Accordingly, reconsideration and removal of the rejection under 35 U.S.C. §103 is respectfully requested.

By the present response, Claim 22 has been added to the claim program. The originally filed disclosure provides a proper basis for the addition of Claim 22 to the claim program. Claim depends from and further defines the invention set forth in Claim 1. More specifically, Claim 22 recites the switch forming part of the electric circuit includes a spring biased contact for returning the light transmissive panel to a first position after the panel is displaced in response to a motion of air being directed through the opening in the walled enclosure.

Claims 2 through 8 and 22 depend, directly or indirectly, from and further define the invention set forth in amended Claim 1. Similarly, Claims 10 through 14 depend from and further define the invention set forth in amended Claim 9. Moreover, Claims 17 through 20 depend from and further define the invention set forth in Claim 15. Accordingly Claims 1 through 15, 17 through 20, and 22 are all patentably distinguishable from U.S. Patent No. 3,479,561 to J. L. Janning in view of Applicants admitted prior art. Accordingly, reconsideration and removal of the rejection

In Re Application Of:

R. R. Reinecke;

J. A. Reinecke

Serial No.: 10/803,017

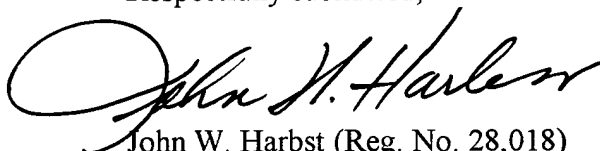
Page 24

under 35 U.S.C. §103 is respectfully requested.

The references which the patent Examiner considers pertinent to Applicant's disclosure - but does not rely upon - have been reviewed. It is submitted, however, none of these references, either alone or in combination with each other or the references relied upon, negatively affects the patentability of the present invention as defined by the claims now presented for reconsideration.

In view of the above, a favorable reconsideration of this application and early passing of this patent application to issuance is respectfully solicited. Should the patent Examiner desire to speak with Applicant's attorneys, they may be reached at the number indicated below.

Respectfully submitted;



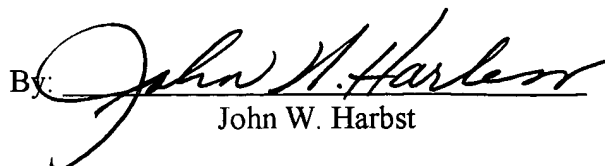
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**CERTIFICATE OF MAILING**

I hereby certify this AMENDMENT "A" along with any other papers associated therewith, are being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents; P.O. Box 1450; Alexandria, Virginia 22313-1450 on the date indicated below.

Date: November 9, 2005

By:   
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